

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MATTHEW ANDREW GARCES,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. SA-25-CV-127-FB
	§	
CITY OF SAN ANTONIO; ATTORNEY	§	
DEBORAH KLEIN; SAN ANTONIO	§	
POLICE DEPARTMENT; PUBLIC SAFETY	§	
HEADQUARTERS, SAPD OFFICER D.	§	
FOSTER; SAPD OFFICER F. RUIZ,	§	
BADGE #1028; SAPD OFFICER ARIZOLA,	§	
BADGE #1818; SAPD OFFICER L. LEVI;	§	
SAPD SGT. OLIVA, BADGE #3233; SAPD	§	
OFFICER G. COLEMAN, BADGE #378;	§	
SAPD HOMCIDE UNIT; DETECTIVE	§	
DELEON; and BEXAR COUNTY DISTRICT	§	
ATTORNEY, JOE GONZALES,	§	
	§	
Defendants.	§	

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on March 6, 2025 (docket #4), concerning Plaintiff Matthew Andrew Garces' Application to Proceed in District Court Without Prepaying Fees or Costs and proposed civil complaint. According to the CM/ECF system, the Report and Recommendation sent by certified mail, return receipt requested, and was received by the Plaintiff on March 11, 2025 (docket #7). To date, the docket reflects no objections to the Report and Recommendation have been received.¹

¹ Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing ." FED. R. CIV. P. 5(b)(2)(C). If service is made by electronic means, "service is complete upon transmission." *Id.* at (E). When the mode of service is by electronic means, three days are no longer added to the time period to act after being served. *See Heverling v. McNeil Consumer Pharmaceuticals, Co.*, Civil Action No. 1:17-CV-1433, 2018 WL 1293304 at *2 n.3 (M.D. Pa. Mar. 13, 2018) ("On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Civil Procedure. In pertinent part, the Court amended Rule 6(d) to remove 'electronic means' as a mode of service triggering an additional three days to act when a responsive period commences upon service. *See* FED. R. CIV. P. 6, advisory committee's note to 2016 amendment. The amendments took effect on December 1, 2016.").

In the Report, United States Magistrate Judge Elizabeth S. Chestney recommends that this case should be dismissed for failure to state a claim and/or lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1915(e). Magistrate Judge Chestney's recommendation is based upon her review of Plaintiff's proposed Complaint and her finding that Plaintiff failed to plead any plausible claim or any claim over which this Court has subject matter jurisdiction.

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff's case should be dismissed pursuant to 28 U.S.C. § 1915(e) for failure to state a claim for relief and/or for lack of subject matter jurisdiction.

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on March 6, 2025 (docket #4), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff's case is DISMISSED pursuant to 28 U.S.C. § 1915(e) for failure to state a claim for relief and/or for lack of subject matter jurisdiction. Motions pending, if any, are also DISMISSED, and this case is now CLOSED.

It is so ORDERED.

SIGNED this 31st of March, 2025.



FRED BIERY
UNITED STATES DISTRICT JUDGE